

### **REMARKS**

Reconsideration and withdrawal of the rejections set forth in the Office Action dated December 22, 2010, are respectfully requested in view of this amendment. By this amendment, claims 1, 2 and 8 have been amended. Claims 1-8 are pending in this application and are presented for examination.

Claims 1 and 2 have been amended to clarify that the cross-section of the thread is described, as distinguished from a total length of the thread. Support is found throughout the specification and drawings. Claim 8 has been amended to correct the spelling of "phenylene" as suggested by the Examiner.

It is respectfully submitted that the above amendments introduce no new matter within the meaning of 35 U.S.C. §132, and the scope of the claims was not altered or reduced by this amendment.

In the presently outstanding Office Action, the Examiner rejected claims 1-5 were rejected under 35 U.S.C. §102(b) as being anticipated by U.S. Patent No. 5,712,010 to Russek et al. (hereinafter *Russek*). Claims 6-8 were rejected under 35 U.S.C. §103(a) as being unpatentable over *Russek*, taken in view of U.S. Patent Application Publication No. 2002/0066491 to Lively (hereinafter *Lively*). Also, the Examiner objected to claim 8 because the term "phenylene" is misspelled "phenylen".

The rejections of claims 1-8 are respectfully traversed.

### **Claim Objection**

Claim 8 was objected to in that "phenylene" was misspelled "phenylen". The claims had been amended accordingly.

**Rejections under 35 USC §102**

Claims 1-5 were rejected under 35 USC §102(b) as anticipated by *Russek*. *Russek* is cited as disclosing a protective tube in which a tube length is substantially greater than the length of the diameter.

**Response**

This rejection is traversed as follows. For a reference to anticipate an invention, all of the elements of that invention must be present in the reference. The test for anticipation under section 102 is whether each and every element as set forth in the claim is found, either expressly or inherently, in a single prior art reference. *Verdegaal Bros. v. Union Oil Co. of California*, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987); MPEP §2131. The identical invention must be shown in as complete detail as is contained in the claim. *Richardson v. Suzuki Motor Co.*, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989); MPEP §2131.

The claims describe a configuration in which individual threads have a cross-section which is such that a cross-sectional thickness of the threads in one direction is different from that of the thickness of the threads in another direction. As recited in the Applicants' claims, "... the thickness of the cross section of the threads (2) along a first axis is substantially greater than the thickness of said cross section along a second axis which is perpendicular to the first."

*Russek* fails to show this structure, and instead shows a tubing structure in which the threads have a conventional round cross-section. While the sheath can be and often is flattened (although not shown in *Russek*), that function does not affect the cross-section of the threads. Therefore, *Russek*, even if flattened, does not suggest an arrangement in which, "... the thickness of the cross section of the threads (2) along a first axis is substantially greater than the thickness of said cross section along a second axis which is perpendicular to the first."

Additionally, as best understood, the rejection is describing a difference in dimensions of the protective tube along a length of the tube and not a cross-section. Most or all cabling sheaths have a greater length than cross-section; however, this does not of course address the cross-sectional dimensions of the sheath.

Therefore, Applicants submit that the Examiner has failed to show where each and every feature of the presently claimed subject matter is purportedly disclosed, taught or suggested in the cited prior art, which is the test for anticipation under 35 U.S.C. §102.

In view of the foregoing, withdrawal of the rejection is respectfully requested.

#### **Rejections Under 35 U.S.C. §103**

The Examiner rejected claims 6-8 were rejected under 35 U.S.C. §103(a) as being unpatentable over *Russek*, taken in view of *Lively*. *Russek* is cited as comprising threads which have a length greater than a width. *Lively* is cited as showing polyethylene, polypropylene, or phenylene polysulphide in threads.

#### **Response**

This rejection is traversed as follows. To show obviousness under §103, it is necessary to show an incentive to benefit from the change. *KSR International Co. v. Teleflex Inc. et al.*, 127 S.Ct. 1727, 82 USPQ2d 1385 (2007).

"The proper question to have asked was whether a pedal designer of ordinary skill, facing the wide range of needs created by developments in the field of endeavor, would have seen a benefit to upgrading Asano with a sensor. In automotive design, as in many other fields, the interaction of multiple components means that changing one component often requires the others to be modified as well." (*id* at 127 S.Ct. 1744)

A demonstration of obviousness under §103 requires that the combination represent a design step well within the grasp of a person of ordinary skill in the relevant art:

"KSR provided convincing evidence that mounting a modular sensor on a fixed pivot point of the Asano pedal was a design step well within the grasp of a person of ordinary skill in the relevant art." (*id* at 127 S.Ct. 1746)

The standard for anticipation under 35 USC §102 and obviousness under 35 USC §103(a) following *KSR* is detailed in *Forest Labs v. Ivax Pharmaceuticals*, 501 F.3d 1263; 84 USPQ 2d 1099; 41 A.L.R. Fed. 2d 697 (2007). In *Forest Labs*, the court determined that a reference mentioned a particular chemical component, but did not explain how to obtain it and therefore deemed that, "A reference that is not enabling is not anticipating." The court then deemed the product was therefore unobvious over that reference.

*Russek* is cited as comprising threads as discussed; however, it is respectfully submitted that this feature is completely absent from the reference. *Lively* is cited as showing polyethylene, polypropylene, or phenylene polysulphide in threads.

It is respectfully submitted that neither reference shows the relevant features for which they are cited. As mentioned, *Russek* fails to show or suggest cross-sectional widths which differ. *Lively* fails to show the cited materials used in threads because *Lively* does not even mention threads. Instead, *Lively* describes some sort of pipe coating.

Therefore, there can be no suggestion under 35 USC §103(a) to modify threads according to the *Lively* disclosure because *Lively* does not describe threads. It is a pipe. This applies to both the concept of, "... the thickness of the cross section of the threads along the axes, as well as the materials constituting the threads.

The combination fails to meet the *KSR* test because the provision of threads having different cross-sections across different axes is not a mere design step (not "a design step well within the grasp of a person of ordinary skill in the relevant art"), and is a basic function of the *Russek* construction.

It is therefore respectfully submitted that the rejection under 35 U.S.C. §103(a) should be withdrawn and that the case be passed to issuance.

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**CONCLUSION**

In light of the foregoing, Applicants submit that the application is in condition for allowance. If the Examiner believes the application is not in condition for allowance, Applicants respectfully request that the Examiner call the undersigned.

Respectfully submitted,  
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